IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1420 of 2003
Date of Decision : 10.07.2007

Ajmer Singh .....Appellant

versus

Pal Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.S.S.Brar, Advocate for the appellant.
Mr.Rajan Bansal, Advocate for respondent No.10.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The appellant is one of the legal heirs of deceased Bikkar Singh, defendant No.4, aggrieved from the judgment and decree passed by the Courts below.

A suit for dissolution of partnership firm and rendition of accounts was filed by one Pal Singh. In the said suit, defendant No.4 Bikkar Singh filed written statement admitting the claim of the plaintiff. The learned trial Court dismissed the said suit on 14.10.1995. During the pendency of the appeal against the said judgment and decree, Bikkar Singh died and the present appellant was impleaded as one of the legal heirs of deceased Bikkar Singh, on 4.4.1998. The learned First Appellate Court affirmed the findings recorded by the learned trial Court and dismissed the appeal.

It is the case of the appellant that an application was filed by the appellant for transposing him as appellant and said application was

declined by the learned First Appellate Court in the main judgment and decree and not earlier in time. It is contended that in terms of the judgment reported as ***"1999 (6) S.C.C.-44, Sangamesh Printing Press versus Chief Executive officer, Taluk Development Board"***, the application for impleadment of a party is required to be decided at an earlier point of time than the decision of appeal on merits.

It may be noticed that the plaintiff Pal Singh has filed the second appeal before this Court bearing R.S.A. No.1343 of 2003. The said appeal was dismissed on 3.4.2003. The predecessor of the appellant has admitted the claim of the plaintiff. The affirmance of the decree passed by the Courts below in RSA No.1343 of 2003 preclude the appellant to dispute the findings recorded by the learned First Appellate Court in the present second appeal as well.

The argument raised by the learned counsel for the appellant that the application is required to be decided individually prior to the appeal taken up for arguments, is misconceived. The appellant was the party to the proceedings. In fact, the predecessor of the appellant has admitted the claim of the plaintiff. Thus, the appellant was the party to the suit and had the opportunity to take all possible grounds to seek dissolution of the partnership firm. Since the plaintiff has remained unsuccessful, with whom the appellant has a common interest, the appellant cannot be allowed to dispute the findings recorded by the learned First Appellant, in second appeal. The judgment relied upon is clearly distinguishable. In the said case, the State Government was sought to be impleaded as defendant in appeal, but without deciding such application, the appeal was disposed of holding that different consequences could follow if the application is to be

allowed. But in the present case, the appellant had common interest with the plaintiff. Therefore, the learned First Appellate Court has not committed any illegality in deciding the application with the main appeal itself.

I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law in the second appeal, for consideration of this Court. Consequently, the present appeal is dismissed.

10-07-2007 (HEMANT GUPTA)
*mohinder JUDGE